

ADEPT
Legal Commentaries

February 2003

Parliament spring session

February 10, 2003

The Parliament of the Republic of Moldova resumed its activity on February 6. As in 2002 the Parliament session was inaugurated by protest rallies. Representatives of 16 out of the 25 registered parties picketed the Parliament calling the ruling party to enforce the PACE resolutions and "fulfil the wish" of the 200,000 citizens who signed for the legislative referendum on changing the electoral system.

Although it was stated that all 16 parties took part in the protest rallies, in reality only 8-9 of them actually showed up, especially the ones with low political rating. Two parties represented the Parliament opposition: Christian-Democratic Peoples' Party and Social Democratic Alliance.

The Social Democratic Alliance came up with the initiative to picket the Parliament and suspend the sessions of the Permanent Round Table.

Now its very unlikely that the Parliament would agree with the Social Democratic Alliance initiative to declare a referendum on changing the electoral system. It is more likely they would only partially yield so as to show domestic and international public opinion that they resumed the dialogue and cooperate with the opposition.

Besides political issues the Parliament examined a series of other legal acts, as follows:

I. Law on the modification and completion of the Electoral Code, passed in the first reading.

ADEPT comment: Election Code was amended so as to adjust it to the Constitutional Court Resolution no. 13 of March 14, 2002 and European Charter on Local Autonomy. The amendments reintroduce the provisions of the Electoral Code dealing with mayor election, which were excluded by the law outlawed in early 2002.

Also restored are the provisions referring to the mayor revocation via local referenda or based on the court ruling, whenever the former violates the law.

In addition, the draft law includes new provisions stipulating that a person may not run for the mayoralty for more than two consecutive terms. Another amendment refers to sanctioning the persons whose resignation leads to new elections.

II. Law on the modification and completion of the Law on Administrative-Territorial Division, passed in the first reading.

ADEPT comment: Under the law, changes are made in the structure of administrative-territorial units by amalgamating several localities in a single one. Also, several localities are to be transferred from one rayon to another.

Most importantly under the new law, administrative-territorial units shall enjoy the status of a legal entity and shall be entitled to patrimony. There are also some general provisions referring to the local public administration functions, i.e. meeting the needs of the residents.

The above said amendments have been developed at the recommendation of Council of Europe experts and are part of a broader program of adjusting Republic of Moldova law to the PACE resolutions.

Noteworthy, all the aforesaid amendments shall be operated to a law, which hasn't been enforced yet. When the Constitutional Court outlawed the local elections due in 2002, the Parliament decided that the new Law on Administrative-Territorial Division and Law on Local Public Administration should be enforced on the date 2003 general local elections are set.

III. Law on the ratification of the Convention on the rights and procedures of holding a public office, adopted in the second reading.

ADEPT comment: World Labor Organization passed the Convention in 1978. Its main provisions refer to the right of public officers to associate in trade unions. In addition, the Convention includes guarantees against unwarrantable interference of the public officers in the trade unions' activity.

The main goal of the Convention is to grant independence to the public officers' trade unions, so that they could freely defend the interests of their members.

IV. Law on the modification of the civil status acts.

ADEPT comment: In the law the Parliament cancelled its own decision of 2001, namely the Law on the Civil Status Acts, providing that all the aforesaid acts should be drawn in the state language as well as in Russian. Constitutional Court outlawed the provisions, fact, which generated a public scandal. Both the ruling party and ethnic minorities complained that the Court "exceeded its competencies".

In its ruling Constitutional Court referred to the Law on the Functioning of Languages on the Soil of the Republic of Moldova. The said law enjoyed the status of a constitutional law, and for 7 years could have been modified by the vote of 2/3 of deputies.

On the other hand, experts claim that binding use of Russian breaches Constitutional provisions and even the rights of other minorities residing in Moldova.

Parliament Activity Review February 10-14, 2003

February 17, 2003

In the time period covered by this commentary the Parliament adopted the following legal acts:

I. Law on modification and completion of the Electoral Code.

ADEPT comment: One of the main reasons for the escalation of the protest rallies was the fact that a year ago Communist faction amended the Electoral Code and excluded the provisions referring to the direct election of the mayors and their revocation via local referendum. The Communist Party resorted to such modifications, as it wasn't sure of the victory in direct elections, rather it preferred mayors to be elected by the local councils. In the partial elections of 2001 Communist candidates won in four out of 11 localities where mayors were reelected.

Constitutional Court outlawed the modifications operated by the Parliament. That is why the Parliament had to restore the provisions previously excluded.

Accordingly, the mayor may be revoked whenever he/she fails to observe the interests of the community, fails to fulfil his/her duties, or violates ethical and moral principles. The mayor may be revoked based on the court ruling whenever he/she:

- is incompatible with the position held;
- takes part in the activity of unconstitutional entities;
- fails to observe the Constitution and other laws.

The last provision might turn to be very complicated for the Courts, as the Electoral law does not stipulate which violations should be sanctioned, which is left to the discretion of the Prosecutors and Courts. This might lead to different rulings being issued on similar cases.

Also the law provides that no person may run for more than two consecutive mandates.

By adopting the said law the Parliament rejected 4 other drafts on the modification of the Electoral Code submitted by the Social Democratic Alliance. In particular the drafts referred to:

1. Introducing a mixed electoral system: 50 deputies to be elected in a single national constituency, whereas 51 in uninominal constituencies based on the majority system. Social Democratic Alliance intended to put this issue to a national referendum, however the Parliament did not endorse the initiative.
2. Introducing a preferential system, i.e. in case a candidate fails to pass the threshold of representation his/her votes shall not be distributed to the candidates who managed to pass the threshold, but rather to the parties sharing similar doctrines or programs.

The enforcement of the system might be difficult due to the close similarity between the doctrines and programs of various political parties.

3. Changing the ballot design, by replacing the current ones with detachable ones so as to trace whether additional ballots have been brought to the polling place.
4. Additional requirement to be met for the President to declare a referendum. Abolishing the requirement that 3/5 of the registered voters should take part in elections.

II. Law on modification and completion of the Law on the Status of the Deputy in Parliament.

ADEPT comment: The modifications regulate related businesses carried by the MPs. Previously, amendments were operated to the Constitution allowing deputies to conduct remunerated scientific and didactic activity. The law adopted by the Parliament specifies that such activities may not be carried out during working hours as specified in the Parliament Regulation.

Under the current Parliament Regulation, deputies work three days per week in the Commissions, factions, etc. Consequently, they may teach or do research in the two days left.

Parliament Activity Review February 17-21, 2003

February 24, 2003

Opposition is still boycotting the Parliament sessions. During the week, MPs focussed on the Law on Fighting Extremism as well as the draft laws on changing the status of the National TV.

I. Law on Fighting Extremist Activities

ADEPT comment: The debates on the law commenced immediately it was published for public debates in mass media. However there was a low feedback, which focussed mainly on:

- **Rejecting the initiative**, on the grounds it runs counter to democratic norms and legal framework;
- **Adopting the initiative and its immediate enforcement**, on the grounds tough measures should be taken against the opposition "extremism". Such opinions were largely circulated in the state mass media.

As civil society failed to express its position and propose concrete improvements, deputies decided to adopt the law in the wording submitted by the President.

The law defines the notions of extremism, extremist activity, extremist organization, and extremist materials. The following measures shall be applied to the (political, non-governmental and religious) organizations involved in extremist activities:

- warning to stop extremist activities;
- appeal to the Court to suspend the activity of the relevant organization.

The law also provides sanctions for mass media, which circulates extremist information and prohibits extremist activities during public rallies. Penal and administrative sanctions shall be not specified directly in the Law, but rather in the specific laws.

One of the greatest difficulties in enforcing the law would be the interpretation of extremist activities by the law enforcement forces, which proved on numerous occasions they might enforce and interpret the law differently in different cases.

II. Law on the modification and completion of the Law on National Audiovisual Public Institution

ADEPT comment: The Parliament adopted in the first reading three draft laws on the establishment and operation of the Coordinating Council of the "Teleradio-Moldova" Company. The authors of the drafts are the Communist Faction, Social-Democratic Alliance Faction and a group of independent MPs.

All three drafts were submitted for the expertise of the Council of Europe. As the draft developed by the Social-Democratic Alliance was considered to be the best, the majority faction approved it as a basis for the second reading.

III. Law on social canteens

ADEPT comment: Under the law, social canteens are to be established as legal entities providing free services to the vulnerable strata of the society. Local government and entrepreneurs are entitled to establish such canteens under any form of ownership. The following may benefit of the canteen: pensioners, disabled and sick persons. Many deputies criticized this unclear definition of the persons entitled to benefit of the canteen and argued that it would make the enforcement cumbersome.

The canteens may provide the following services: daily meals, home delivery of cheap products, home delivery of clothes at a discount rate, etc. Canteens shall be funded out of the extra-budget funds and local budgets.

IV. Law on artifacts

ADEPT comment: The draft was adopted by the Parliament in the first reading and is intended to define the legal framework for the national crafts, so as to revive national traditions in the field.

The law guarantees the copyright on artifacts, and provides the procedure of their registration in the National Patrimony Register. Also, the law provides that state allocations shall be provided to support the national crafts and fund the programs in the field.

Needless to say, Prime-Minister referred on several occasions to the importance of supporting the crafts and to the obligation of the state institutions to promote national traditions by purchasing souvenirs.

V. Resolution on appointing new judges to the Supreme Court of Justice

ADEPT comment: Three new judges have been appointed to the Supreme Court of Justice, whereas other two judges have been promoted to the position of Deputy Chair of the Penal and Civil College of the Supreme Judiciary Body.

It is worth mentioning that it has been debated for long time whether judges should be appointed based on a contest. Although this time judges were selected based on a contest, it wasn't made public and the appropriateness of the applicants was evaluated only by the representatives of the majority faction, as Social-Democratic Alliance and Christian-Democratic Peoples' Party were boycotting the session.

Parliament Activity Review February 24-28, 2003

March 5, 2003

I. Law on modification and completion of the Law on Audiovisual

As was expected, opposition factions and ruling party tried to negotiate a compromise draft for the second reading that would suit the authors and meet Council of Europe recommendations. During the plenary session representatives of the Communist faction stated they agreed state authorities to designate 1/3 of the Observers' Council members, whereas opposition and non-governmental organizations the other 2/3, on condition they enjoy large public support.

Representatives of the Social-Democratic Alliance withdrew their draft, protesting that not all their recommendations were accepted. The ruling party acted exactly like it did last summer and voted an alternative draft. In line with the recommendations of the Chair of Parliament Commission on Mass Media, the Observers' Council would include:

- 2 representatives of the Presidency;
- 2 representatives of the Parliament (1 of the opposition or independent candidates);
- 2 representatives of the Government;
- 2 representatives of the national minorities;
- 1 representative of the Supreme Magistracy Council;
- 1 representative of the "Teleradio-Moldova" employees;
- 1 representative from each of the following public associations (trade unions, artists' unions, mass media organizations, veteran's and cultural associations).

Overall the Council would include 5 representatives of the authorities, thus 1/3 quota has been observed.

II. Law on extending the deadline for submitting the income declarations by public officers

Initially the law provided that by January 20, 2003, income and estate declarations were to be filled by public officers (President, MPs, Government members, judges, prosecutors, mayors, etc) and verified.

The campaign has started in mid-January and mass media reported on the formation of Control Commission and submission of declarations by officers employed by Ministries and Departments, as well as other state institutions.

There was much skepticism voiced with regard to the transparency of the declarations and the fact that they would really be made public. Even more skepticism was expressed with regard to the sanctions to be applied for the submission of false data or illegal income.

Under the newly adopted amendments, the deadline for submitting the declarations has been extended until July 1, 2003. Afterwards the Control Commissions would examine them and supposedly make public some of the data.

III. Law on state policy on innovations and know-how, adopted in the first reading

The law defines the basic notions in the field of know-how. The state policy in the field is declared a national priority. The law also regulates the responsibilities of local government in the field; priorities in the field of innovations and know-how; criteria for selecting innovation projects; sources of funding, etc.

IV. Law on Local Public Administration

After short debates, the Parliament passed a new Law on Local Public Administration in the first reading. For more details on the law see the commentary ["Revising local public administration"](#).